

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 21

August 17, 2005

SUBJECT: DEPARTMENT BOOKING SEARCHES - REVISED

PURPOSE: A decision by the Ninth Circuit Court of Appeals has held that a blanket policy of strip searching all felony arrestees is unconstitutional. The Court has ruled that reasonable suspicion is required for strip and visual body cavity searches of arrestees. Under this standard, reasonable suspicion may be based on the nature of the offense (not the mere distinction between a felony and misdemeanor offense), the arrestee's appearance and conduct, and the existence and nature of any prior arrest record. This Order supercedes Office of the Chief of Police Notice, "*Change in Department Policy Regarding Felony Booking Searches,*" dated December 31, 2002.

This Order informs Department employees of the revised procedure for a strip search or visual body cavity search of infraction, misdemeanor and felony arrestees.

PROCEDURE:

I. BOOKING APPROVAL, FORM 12.31.0 - REVISED. The Booking Approval, Form 12.31, has been revised to include two search justification boxes inside the "REASON TO SEARCH" box. If a strip, visual body cavity or physical body cavity search is necessary, one of the justification boxes shall be checked. When applicable, justification for the search shall be articulated in the space provided. The watch commander approving the search shall place his or her signature and serial number in the "WATCH COMMANDER APPROVING SEARCH" box. Use and distribution of this form has not changed.

II. STRIP SEARCH OR VISUAL BODY CAVITY SEARCH. Arrestees in custody for an infraction, misdemeanor or felony offense shall not be given a strip search or visual body cavity search unless:

- * The arrest involved a controlled substance; or,
- * There is a reasonable and articulable suspicion that the arrestee is concealing contraband or weapons, regardless of the offense.

The type and classification of the offense alone does not automatically provide reasonable suspicion. The totality of the circumstances in each situation should be considered in determining whether to conduct a strip search or visual body cavity search (e.g., the nature of

the offense, the arrestee displaying behavior which would lead officers to believe he/she is concealing contraband or weapons, the arrestee's criminal record, etc.).

Note: Prior arrests involving weapons, controlled substances, violence, or the appearance and conduct of an arrestee may be considered as a factor in determining whether to conduct a strip search or visual body cavity search.

The term "contraband" as it applies to a strip search or visual body cavity search is restricted to controlled substances or other items that may pose a threat to the security of the jail facility. Strip searches and visual body cavity searches shall not be conducted to recover evidence in the absence of a search warrant.

Removing objects from an arrestee's body. When an officer conducting a strip search or a visual body cavity search of an arrestee becomes aware that the arrestee has placed any object in the rectal area, the vaginal area, or under the breast or scrotum, the officer shall request the City Jail Dispensary medical personnel to remove the externally located object, even if the object can be recovered without touching the arrestee. If the Jail Dispensary medical personnel are not available, officers shall transport the arrestee to a contract hospital for removal of the object by either a physician, registered or licensed vocational nurse, or an Emergency Medical Technician Level II, licensed to practice in California.

Note: This Order does not alter the requirement that a search warrant be obtained when the removal of an object inside a body cavity (i.e., vagina, or anus) is necessary.

Exception: In any case where the object observed is a weapon and there is an immediate and present danger of it being used against the officer, the officer may immediately recover the object.

III. WATCH COMMANDER'S RESPONSIBILITY. Upon receipt of a Booking Approval, Form 12.31, or an In-Custody Authorization for Strip Search, Visual Body Cavity Search, Physical Body Cavity Search, Form 5.30, the watch commander shall:

- * Review the form for completeness and accuracy;

- * Determine if the specific facts and circumstances justify the type of search requested;
- * Approve or disapprove the strip search, visual body cavity search, or physical body cavity search;
- * If approved, ensure that one of the check boxes under the "REASON FOR THE SEARCH" section of the Booking Approval, Form 12.31, has been completed by the arresting officer;
- * When an In-Custody Authorization for a Strip Search, Visual Body Cavity Search, Physical Body Cavity Search, Form 5.30, is used, the reason for the search shall be articulated on that form;
- * Sign and place his or her serial number in the "WATCH COMMANDER APPROVING SEARCH" box; and,
- * Ensure any search approved is conducted as set forth in the Department Manual Section 4/620.22.

IV. JAIL DIVISION, WATCH COMMANDER'S RESPONSIBILITY. When the Jail Division watch commander does not agree with the approval or disapproval of a strip search or visual body cavity search of an arrestee to be housed at his/her facility, he/she shall contact the watch commander who approved/disapproved the search for clarification. When a difference of opinion still remains, the Jail Division Watch Commander shall make the final decision in approving or disapproving a search.

AMENDMENTS: This Order amends Section 4/620.22 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Jail Division, shall monitor compliance with this directive in accordance with Department Manual Section 0/080.30.

WILLIAM J. BRATTON
Chief of Police

Attachment

DISTRIBUTION "A"